

1 ANNETTE L. HURST (SBN 148738)
ahurst@orrick.com
2 RUSSELL P. COHEN (SBN 213105)
rcohen@orrick.com
3 NATHAN SHAFFER (SBN 282015)
nshaffer@orrick.com
4 DANIEL JUSTICE (SBN 291907)
djustice@orrick.com
5 ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
6 405 Howard Street
San Francisco, CA 94105-2669
7 Telephone: +1 415 773 5700
Facsimile: +1 415 773 5759
8

9 *Attorneys for Defendant
LinkedIn Corporation*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13
14 3taps, Inc.,

Case No. 18-cv-00855-EMC

15 Plaintiff,

**LINKEDIN CORPORATION'S LOCAL
RULE 79-5(G)(3) ADMINISTRATIVE
MOTION TO UNSEAL DOCUMENTS**

16 vs.

17 LinkedIn Corporation,

18 Defendant.

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1 Pursuant to Civil Local Rules 7-11 and 79-5(g)(3), LinkedIn Corporation (“LinkedIn”)
 2 hereby moves for an order unsealing 3taps Inc.’s (“3taps”) Second Amended Complaint (“SAC”)
 3 and the portions of LinkedIn’s Motion to Dismiss 3taps’s SAC (“Motion”), and affiliated papers,
 4 that were filed under seal for reflecting the sealed information in the SAC. Specifically, LinkedIn
 5 seeks an order unsealing the SAC (ECF No. 68-1), LinkedIn’s Motion (ECF No. 76), LinkedIn’s
 6 Request for Judicial Notice In Support Of Its Motion to Dismiss The Second Amended Complaint
 7 (“RJN”) (ECF No. 77), Exhibit 9 (ECF No. 77-9), Exhibit 10 (ECF No. 77-10), and LinkedIn’s
 8 Reply In Support Of Motion to Dismiss Plaintiff’s Second Amended Complaint (and
 9 accompanying documents) filed concurrently with this motion.

10 **I. FACTUAL BACKGROUND**

11 During the April 7, 2022 hearing on LinkedIn’s motion to dismiss 3taps’s First Amended
 12 Complaint, 3taps argued that it could not divulge to LinkedIn or the Court details regarding its
 13 plan to commercialize data from LinkedIn or identify its prospective customers because LinkedIn
 14 could destroy 3taps’s business if it obtained such information. *See Justice Declaration ISO Oct.*
 15 *14, 2022 Filings (“Justice Decl.”) Ex. 21 (Apr. 7, 2022 Hr’g Tr.) at 5.* 3taps did not argue that the
 16 information needed to be kept from the public at large, but argued only that it needed to be kept
 17 from LinkedIn. *See id.* In response, the Court allowed 3taps to file portions of the SAC under
 18 seal “[b]ecause 3taps has raised concern about divulging confidential business information to
 19 LinkedIn.” ECF No. 67. The Court also recognized that any alleged confidential information in
 20 the SAC would remain under seal only if the Court deems it worthy of such treatment. *Justice*
 21 *Decl. Ex. 21 (Apr. 7, 2022 Hr’g Tr.) at 11.*

22 On May 12, 2022, 3taps filed the SAC under seal. ECF No. 68-1. 3taps also filed a
 23 public version redacting the name of its one alleged potential customer and the purpose for which
 24 the customer allegedly will use the scraped information. ECF No. 68-2. On August 1, 2022,
 25 LinkedIn moved to dismiss the SAC. ECF No. 76. LinkedIn filed portions of the motion and
 26 accompanying papers under seal consistent with 3taps’s redactions.

27 On August 24, 2022, 3taps’s CEO, Greg Kidd, attended a reception in Bryn Mawr,
 28 Pennsylvania at the home of the president of Bryn Mawr College. Declaration of Scott Roberts

1 (“Roberts Decl.”) ¶ 2. Scott Roberts, the Vice President and Global Head of Business
 2 Development at LinkedIn was also in attendance. *Id.* at ¶¶ 1-2. During the reception, Mr.
 3 Roberts was introduced to Greg Kidd, who he had not previously met. *Id.* ¶ 2. They struck up a
 4 conversation discussing personal matters before Mr. Kidd divulged that he was involved in
 5 litigation with Microsoft. *Id.* Mr. Roberts mentioned that he worked for LinkedIn, at which point
 6 Mr. Kidd clarified that his litigation was actually with LinkedIn. *Id.* Mr. Kidd told Mr. Roberts
 7 that he had purchased 10% of hiQ for \$500,000 and referred to himself as the “bad guy” behind
 8 scraping-related lawsuits against LinkedIn. *Id.* During the course of the conversation, Mr.
 9 Roberts made clear to Mr. Kidd his role at LinkedIn and Mr. Kidd proceeded to disclose his belief
 10 that LinkedIn data could be used in connection with verified identity attestation for online
 11 payments. *Id.* This conversation took place within earshot of dozens of attendees, some of whom
 12 overheard and commented on the conversation. *Id.* ¶ 3. Indeed, at one point another guest at the
 13 reception, who overheard at least some of the conversation, jokingly commented that Mr. Kidd
 14 and Mr. Roberts were in a lawsuit with each other. *Id.* At no point did Mr. Kidd raise the
 15 prospect of settlement or express an interest in resolving either the hiQ or 3taps lawsuits. *Id.* Nor
 16 did he request that the conversation be maintained confidential in any way (which would have
 17 been impossible given the open nature of the conversation at a reception surrounded by other
 18 guests). *Id.*

19 Sometime after the reception, Mr. Roberts informed counsel of his conversation with Mr.
 20 Kidd. On September 21, 2022, LinkedIn counsel wrote to 3taps counsel regarding the redactions
 21 to the SAC and how Mr. Kidd’s voluntary disclosure of the intended use of LinkedIn information
 22 calls into question 3taps’s prior representations that it could not even “hint[] to the LinkedIn
 23 people what exactly the business plan is” without undue harm to its business. Justice Decl. Ex.
 24 22 (M&C correspondence). After several further communications from LinkedIn counsel, on
 25 October 3, 2022, 3taps counsel responded that Mr. Kidd’s discussion with Mr. Roberts at the
 26 reception was for the purpose of exploring potential settlement and was therefore protected by
 27 FRE 408 (even though the conversation took place during a public reception surrounded by other
 28 guests, some of whom even commented on the discussion, and settlement was not even

1 mentioned), but that since the information had already been disclosed to LinkedIn, 3taps would
 2 remove the attorneys' eyes only designation and permit counsel to share the unredacted SAC with
 3 LinkedIn on condition LinkedIn makes no public disclosure of the SAC. *Id.* On October 5, 2022,
 4 LinkedIn counsel responded that there is no basis for 3taps to assert that the conversation between
 5 Mr. Kidd and Mr. Roberts was a protected settlement communication or a confidential
 6 conversation of any kind, and that Mr. Kidd's voluntary and open discussion of his desires for the
 7 use of LinkedIn data—plans that align with material redacted from the SAC—in the presence of
 8 several people who are not parties to the case, without any precautions taken, destroys any
 9 conceivable assertion of confidentiality over that information. *Id.* On October 7, 2022, 3taps
 10 counsel responded that he would discuss the matter with his client and get back to LinkedIn
 11 counsel on October 12. *Id.* He did not do so. On October 13, 2022, LinkedIn counsel again
 12 asked for a response as the reply brief for the motion to dismiss was due the following day and
 13 LinkedIn needed to know whether it need seek relief from the Court to unseal the information.
 14 *Id.* 3taps counsel responded that he would reach out to his client and attempt to get back to
 15 LinkedIn counsel promptly. *Id.* 3taps counsel was unable to substantively respond, necessitating
 16 LinkedIn file this motion.

17 **II. ARGUMENT**

18 In considering whether documents should be sealed, courts “start with a strong
 19 presumption in favor of access to court records.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331
 20 F.3d 1122, 1135 (9th Cir. 2003). 3taps bears the burden of overcoming this strong presumption
 21 by articulating “‘compelling reasons supported by specific factual findings’ that outweigh the
 22 general history of access and the public policies favoring disclosure.” *Kamakana v. City & Cnty.*
 23 *of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006) (internal citations omitted). This Court and
 24 many others have held that the “compelling reasons” standard applies to dispositive motions as
 25 well as to complaints. *In re Google Location Hist. Litig.*, 514 F. Supp. 3d 1147, 1161–62 (N.D.
 26 Cal. 2021) (collecting cases). “The mere fact that the production of records may lead to a
 27 litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more,
 28 compel the court to seal its records.” *Kamakana*, 447 F.3d at 1179 (citing *Foltz*, 331 F.3d at

1 1136).

2 3taps's sole justification for sealing portions of the SAC was to prevent LinkedIn from
 3 learning the identity of its customer or that customer's alleged intent to use data scraped from
 4 LinkedIn. Specifically, 3taps's SAC sealed only (1) the name of its one purported customer, (2) a
 5 high-level description of that customer's services, and (3) a statement that the customer would use
 6 data scraped by 3taps in connection with those services. SAC ¶¶ 20-25. 3taps repeatedly asserted
 7 that this information deserves Attorneys' Eyes Only status because LinkedIn would be able to
 8 destroy 3taps's business if it learned how 3taps allegedly plans to monetize data from LinkedIn.
 9 *See* 3taps, Inc.'s Opp'n to Def.'s Mot. to Dismiss First Am. Compl. (ECF No. 63) at 8 (arguing
 10 "advance disclosure to LinkedIn of how the data will be monetized would be commercial
 11 suicide"); Justice Decl. Ex. 21 (Apr. 7, 2022 Hr'g Tr.) at 5 ("But we don't want LinkedIn to know
 12 [our business plan or who our prospective customers are], and that's why we don't want to put it
 13 in a pleading. They could destroy our business.").

14 While 3taps insisted on secrecy when litigating its claims before this Court, 3taps's CEO,
 15 Greg Kidd, did not observe the same secrecy in practice. Instead, he openly had a public
 16 conversation with a senior LinkedIn executive, at a reception with dozens of other people in
 17 earshot, identifying himself as the person behind scraping lawsuits against LinkedIn. Roberts
 18 Decl. ¶ 2. During the course of that conversation, he described his vision for how LinkedIn data
 19 theoretically could be used in support of his business ventures, offering a description that
 20 mirrored information filed under seal in the SAC. *Compare* Roberts Decl. ¶ 2 with SAC ¶¶20-25.
 21 Moreover, Mr. Kidd's relationship to the alleged customer whose identity is redacted from the
 22 public SAC is apparent from publicly available sources. *See, e.g.*, Justice Decl. Ex. 23 (Kidd
 23 LinkedIn Profile) & Ex 26 (customer website identifying Mr. Kidd). As a result, Mr. Kidd's
 24 conversation with Mr. Roberts disclosed to LinkedIn the substance of the information that 3taps
 25 previously insisted could not be disclosed to LinkedIn without risking "commercial suicide."
 26 3taps has since agreed to share the unredacted SAC with LinkedIn, eliminating the only stated
 27 justification for filing the information under seal in the first place. *See* Justice Decl. Ex. 22
 28 (M&C correspondence).

1 Yet 3taps continues to insist that while the information in the SAC may be shared with
2 LinkedIn, it must still be kept from public view. 3taps has offered no justification for continued
3 sealing, nor can it. This is particularly so given the heightened showing necessary to maintain
4 sealing of materials submitted in pleadings or with dispositive motions. There are no “compelling
5 reasons” to maintain under seal information that 3taps’s CEO freely shares at cocktail parties.

6 **III. CONCLUSION**

7 For the reasons stated above, LinkedIn’s motion to unseal should be granted and the Court
8 should publicly file the SAC, and LinkedIn’s motion to dismiss and related papers currently under
9 seal.

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11 Dated: October 14, 2022

Orrick, Herrington & Sutcliffe LLP

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By: _____ */s/ Annette L. Hurst*
14 ANNETTE L. HURST
15 Attorneys for Defendant
16 LinkedIn Corporation

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